

Q&A With Cahill's Bart Friedman

Law360, New York (November 05, 2010) -- Bart Friedman is a partner in the New York office of Cahill Gordon & Reindel LLP, leader of the firm's white collar litigation practice group and chairman of the firm's business development committee. Friedman advises corporations, boards of directors, committees, and officers and directors in corporate matters and securities transactions and in governance and enforcement challenges, including those arising under Sarbanes-Oxley.

Formerly special counsel and an assistant director at the U.S. Securities and Exchange Commission, Friedman has represented, or is currently representing, the following companies, members of management, or the independent members of the boards of Abercrombie & Fitch, Beazer Homes, Cablevision, Centex, Coca-Cola Enterprises, D.E. Shaw, Estee Lauder, Fortress, Freddie Mac, H&R Block, HSBC, MolsonCoors, Novell, NYMEX, Pfizer, Qualcomm, Viacom, Wellcare and other public companies.



Bart Friedman

Q: What is the most challenging case you've worked on, and why?

A: It is always difficult to represent an institution in crisis and representing Freddie Mac's independent board of directors during the financial crisis and the government's subsequent decision to place the GSEs (Freddie as well as Fannie) into conservatorship was complicated, pressured, fascinating and all-consuming. It required legal and nonlegal analysis and management of multiple relationships of individuals and institutions under stress and scrutiny. We were dealing with the Treasury, SEC and the Federal Reserve Board; OFHEO (Freddie's primary regulator at the time) and a management which had done a tremendous job under difficult circumstances and intense and wise members of the board who had given their time and counsel.

My job was made easier by a first class general counsel at Freddie Mac (Bob Bostrom) and excellent company counsel. The decision by the government necessitated the formulation of a legal plan enabling the board to act over a weekend, and to allow the board to thoughtfully consider and analyze the request being made that they voluntarily place the company into conservatorship. A careful plan had to be developed on no notice to provide the necessary background, legal context and the political context for what was being asked of them and to enable the board to fulfill their fiduciary responsibility.

We had to script a board meeting with company counsel, regulatory counsel, local Virginia counsel and board counsel to advise on the impact and implications of what the board was being asked to do. Challenging, difficult and critical decisions were made in those 48 hours.

Q: What accomplishment as an attorney are you most proud of?

A: I am very proud of my work as chair of the Public Responsibility and Ethics Committee of The Brookings Institution. An iconic American think tank at the very center of the public policy debate in the highly partisan and politicized U.S. capital,

Brookings has been guided by its leadership and its board to conduct itself in a highly ethical way with nonpartisan decision-making and analysis that was beyond reproach. I always liked to quote Sen. Patrick Moynihan who said “everyone is entitled to his own opinion, but not his own facts”. I have done the same pro bono work for the Council on Foreign Relations, involving my participation in task forces on such issues as post conflict Iraq, the implications of the development of nonlethal weapons and the issue of rendition of combatants to other countries.

While not the typical pro bono assignment, my work at Brookings and the Council on Foreign Relations has given me the opportunity to provide legal advice in the context of public policy, a highly charged political environment, and to be required to think beyond the legal issue immediately at hand. It is challenging to step outside the comfort zone of legal advice and think about problems that surface where law and politics meet. An intersection that, given the breadth and depth of government involvement in U.S. corporations, is valued and valuable.

Q: What aspects of law in your practice area are in need of reform?

A: Governance of the American corporation is based on a centuries-old model. The modern corporation with global reach and hundreds of thousands of employees in multiple venues with extensive transborder activities and numerous and sometimes conflicting legal and compliance mandates is in need of an overhaul. Can a director truly do his or her job with four or eight meetings a year? What material is relevant? How much information should directors get? When should they be replaced? How do they get replaced? Unfortunately, I understand the problem but do not see the solution at this time.

Q: Where do you see the next wave of cases in your practice area coming from?

A: Legislation. U.S. legislation (Dodd-Frank), EU legislation, new rules and regulations coming out of multilaterals such as the WTO, etc., will directly affect the way U.S. and global companies work, make money and report earnings. Compliance will be a difficult task for companies and their legal advisers and it will result in lawsuits because of the inability of our Congress and the EU to properly define obligations, responsibilities, etc.

It is difficult enough to understand what can be done and what can't be done when legislation is carefully prepared and regulations are thoughtfully promulgated. Legislation imposing responsibilities on financial institutions for example, with no promulgated regulations yet on the horizon, looks like a fertile field for plaintiffs to define specific obligations through litigation rather than through legislation.

Q: Outside of your own firm, name one lawyer who's impressed you, and tell us why.

A: My dear late friend Bob Joffe, former chair of Cravath Swaine & Moore LLP represented the independent directors of Fannie Mae while I was representing the independent directors of Freddie Mac during the financial crisis. He was wise, warm and always available as we both worked through common issues that often had no ostensible solutions. The problem was the presentation of legal issues with no guideposts and no precedents. Bob's recent and untimely death was a blow to me, his partners, as well as the legal profession.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: Broaden your reach, understand the wider world. Read, get involved in NGO's that have nothing to do with the law. My most valuable experience has been as a member of the board of The Brookings Institution, as a member of the Council on Foreign Relations and work I have done at the CFR on nominations and governance and on trips to regions I knew nothing about (Saudi Arabia, Libya, Egypt, Kosovo, etc.).

Broadening your experiences, challenging yourself intellectually will result in someone who can think more broadly. The worst enemy of any lawyer in this field is to look at problems through too narrow a lens.

